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UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re	Case No.: 19-62049-tmr11
4 Him Food Group, LLC dba Cosmos Creations, Debtor.	CREDITORS COMMITTEE'S OBJECTION TO DEBTOR'S MOTION FOR ORDER AUTHORIZING THE SALE OF SUBSTANTIALLY ALL ASSETS OF THE DEBTOR AND RELATED RELIEF

The Unsecured Creditors Committee, by and through its counsel, hereby objects to the Debtor's motion for order authorizing the sale of substantially all assets of the debtor and related relief on the grounds and for the reason that the proposed transfer is outside the scope of 11 USC §63, and circumvents the Debtor's obligation as a Chapter 11 debtor, and all parties' rights and expectations of a plan of reorganization.

1. Grant agreement is beyond the scope of 11 USC §363b.

The proposed asset purchase agreement attached to the Debtor's motion as Exhibit A, at section 2.5, paragraph (g), requires that as part of the consideration for the purchase, the parties

1 will enter into the grant agreement. The grant agreement is not further delineated in the asset
2 purchase agreement. The debtor's motion summarizes the grant agreement on page 5, at
3 paragraph 15, and describes that the parties will enter into a grant agreement:

4 "Pursuant to which a new entity established by the debtor will be granted a non-
5 assignable 20% economic interest in buyer, which economic interest will be non-
6 voting and subject to the terms and conditions set forth in the grant agreement."

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8 The terms and conditions of that grant agreement are not further delineated. Authorizing
9 any such grant agreement is beyond the scope of 11 USC §363b, and controverts the
10 reorganization plan contemplated by 11 USC Chapter 11. See *Pension Benefit Guaranty*
11 *Corporation, et al. v. Braniff Airways, Inc., et al. (In re Braniff Airways, Inc.)*, 700 F.2d 935 (5th
12 Cir. 1983).

13 In essence, the debtor is proposing to sell 80% of substantially all of the assets.

14 **2. Fair and reasonable price.**

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16 As stated in the cases cited by the debtor in its motion, a sale under 11 USC §363b is
17 possible in the absence of a plan, subject to the sound business purpose test. The sound business
18 purpose test includes four (4) elements:

- 19 (1) A sound business reason;
20 (2) Accurate and reasonable notice;
21 (3) Price is fair and reasonable; and
22 (4) Good faith.

23 *In re Photocopy & Supply, Inc.*, 1994 W.L. 55306 (Bankruptcy D. Idaho 1994).

24
25 At issue in the present case is the element of a fair and reasonable price and good faith.
26 Based upon the motion, the purchaser is only purchasing 80% of the assets, and allowing the

debtor to retain a 20% interest. The purchase price stated in the motion and its attachments includes cash of \$9,150,000, assumption of certain liabilities, a credit bid of approximately \$2,000,000, and the book value of seller's inventory and accounts receivable. Simply based on the cash and credit bid of \$11,150,000 for 80% of the assets, a purchase price for all of the assets would equate to a reasonable sales price of \$13,380,000 for 100% of the value. A sale of substantially all of the assets authorized by 11 USC §363 should require a price paid into the estate of 100% of the value of those assets, \$13,380,000.

A review of the debtor's schedules, at Part 1, lists a value of all assets of \$15,043,017.48. The debtor's petition lists secured creditors at \$11,426,290.91, and unsecured claims of \$7,329,335.87. Based upon the schedules, it appears that the sales price is intended to simply satisfy the secured claims and leave no distribution to unsecured creditors. A liquidation analysis based on the assets and values listed in the schedules suggests that there remains assets in excess of secured debt of \$3,616,727. If the debtor's schedules are accurate, it would result in approximately a 50% dividend to unsecured creditors upon liquidation.

3. Good faith.

Another element of the sound business purpose test is the debtor's good faith. The debtor testified at the meeting of creditors that the bankruptcy filing was at the suggestion of the purchaser, to protect and preserve the purchaser and the assets purchased. In addition, the president of the debtor testified that the debtor's management team would remain intact, and continue to operate the business for the benefit of the purchaser. Based upon that structure, the management team remaining intact and the debtor or insiders retaining an equity position in the purchaser, the transaction is more akin to the purchaser funding the operation of the debtor, as

1 opposed to purchasing substantially all of the assets. That should be done pursuant to a
2 confirmed plan of reorganization.

3 **4. Conclusion.**

4 The debtor's proposed sale goes beyond the scope and authority of 11 USC §363. The
5 debtor's motion should be denied. A plan of reorganization should be proposed which could
6 capture the components of the sale and at the same time protect and preserve a reasonable
7 distribution to unsecured creditors. The court would retain continuing jurisdiction over the
8 operation, and the performance of a reasonable plan of reorganization. Under the present
9 proposal and sale, a distribution to unsecured creditors is not likely.

10 DATED the 28th day of October, 2019.

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13 /s/ Donald J. Churnside
14 Donald J. Churnside, OSB #791876
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CERTIFICATE OF SERVICE

I hereby certify that I served or caused to be served the foregoing CREDITORS COMMITTEE'S OBJECTION TO DEBTOR'S MOTION FOR ORDER AUTHORIZING THE SALE OF SUBSTANTIALLY ALL ASSETS OF THE DEBTOR AND RELATED RELIEF, by depositing in the United States mail at Eugene, Oregon, full and complete copies thereof, by first class mail, postage prepaid, addressed to the following:

Columbia Corrugated Box Attn: Mark Overholt 12777 SW Tualatin Sherwood Rd. Tualatin, OR 97062	Personnel Source Attn: Jerry Stiltner 555 Lincoln St. Eugene, OR 97401
Frank D. Taylor 95796 Howard Lane Junction City, OR 97448	CDB Packaging Attn: Carl D. Brunst 2058 N. Mill Avenue #246 Claremont, CA 81711
Graystone Legacy Investments, LLC Attn: Grant S. Jones 18301 NE 78 th Circle Vancouver, WA 98682	J. Alexandra Rhim 15910 Ventura Blvd, 12 th Floor Encino, CA 91436
John Strasheim 1138 Breckenridge Drive Junction City, OR 97448	

Based on the Bankruptcy Court's Electronic Case Filing records, the following person(s) should be electronically served with notice of the filing of the attached document, when that document is filed with the Court.

- Christopher D. Crowell
- Susan S. Ford
- Nicholas J. Henderson
- Lance A. LeFever
- Margot D. Seitz
- Timothy D. Solomon
- Thomas W. Stilley
- Donald J. Churnside
- US Trustee - Eugene

DATED this 28th day of October, 2019.

GAYDOS, CHURNSIDE & BALTHROP, P.C.

By /s/ Donald J. Churnside

Donald J. Churnside, OSB #791876

Proposed Attorneys for the Unsecured Creditors
Creditors Committee

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